

D/L- 210
01/08/2025
Ct. No.-6
Aritra

C.O. 317 of 2025

**Shiw Ram Jhunhunwala
Vs.
Asha Bansal & Ors.**

Mr. Susenjit Banik
Ms. Shreya Agarwal

....for the petitioner

Mr. Aniruddha Chatterjee, Sr. Adv.
Mrs. Sabita Mukherjee
Mr. Meghnad Dutta
Mr. Arijit Das Mullick
Mr. Saptarshi Bhattacharjee
Ms. Kazi Sabbu

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against the orders dated May 14, 2024 and August 1, 2024 both passed by the learned Civil Judge, 12th Bench, City Civil Court at Calcutta in Ejectment Suit No.18 of 2022.

By the order dated May 14, 2024 the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 was allowed.

The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for recall of the order dated May 14, 2024 which was rejected by the order dated August 1, 2024.

The opposite party herein filed a suit for eviction on the grounds enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997.

The petitioner herein filed applications under Section 7(1) of the 1997 Act and Section 7(2) of the 1997 Act.

The learned trial judge by an order dated March 24, 2023 allowed the application under Section 7(1) of the 1997 Act thereby permitting the petitioner to deposit the current rent month by month as prayed for in court by challan.

Mr. Banik, learned advocate appearing for the petitioner submits that the petitioner prayed for an order allowing him to deposit the arrear rent from the month of August, 2021 till the date of filing of such application by filing the application under Section 7(1) of the 1997 Act and the learned trial judge permitted the petitioner to deposit only the current rent month by month. He submits that the petitioner complied with the directions contained in the order dated March 24, 2023. Mr. Banik submits that without an adjudication of the dispute raised in Section 7(2) of the 1997 Act, the learned trial judge ought not to have struck out the defence of the petitioner against delivery of possession by invoking the provisions of Section 7(3) of the 1997 Act.

Mr. Chatterjee, learned senior advocate appearing for the opposite parties draws the attention of the Court to the statements made in the application under Section 7(1) of the 1997 Act as well as the application under Section 7(2) of the 1997 Act and submits that the petitioner has

admitted that rent on and from the month of August, 2021 is due and payable. He submits that the petitioner did not deposit the admitted arrears of rent along with the application under Section 7(2) of the 1997 Act. He, therefore, submits that on the account of failure to deposit the admitted arrears of rent, the application under Section 7(2) of the 1997 Act was not maintainable in the eye of law.

Heard the learned advocates for the respective parties and perused the materials placed.

In the application under Section 7(1) of the 1997 Act, the petitioner has specifically stated that the plaintiff No.2 used to accept the rent in respect of the suit property and lastly the plaintiff No.2 accepted the rent on August 14, 2021 for a period of three months from May, 2021 to July, 2021. It has been further stated in the said application that thereafter the plaintiffs did not accept any rent. The petitioner stated that after a lapse of a year the defendant requested the plaintiff No.2 several times to accept the arrears of rent but the plaintiff No.2 did not give a definite answer and delayed the matter.

After going through the statements made in the application under Section 7(2) of the 1997 Act, this Court finds that it has been admitted that the plaintiff No.2 accepted the rent for the last time up to the month of July, 2021.

On a conjoint reading of the statements made in the application under Sections 7(1) and 7(2) of the 1997 Act, it is evident that the petitioner admitted that rent from the month of August, 2021 is due and payable from the tenant to the landlord.

Section 7(2) of the 1997 Act states that if in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. It is only upon deposit of the admitted arrears of rent together with the application for determination of the rent payable, the learned Civil Judge is obliged to pass an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the said order.

The petitioner has admitted that the rent from the month of August, 2021 is due from him. It is not in dispute that the petitioner did not deposit the amount admitted by him to be due from him along with the application under Section 7(2) of the 1997 Act.

As rightly argued by Mr. Chatterjee, learned senior advocate that unless the admitted arrears of rent is deposited together with the application under Section 7(2) of the 1997 Act, the learned Civil Judge is not under a

statutory obligation to adjudicate the dispute raised therein and pass an order as contemplated under Section 7(2) of the 1997 Act.

Mr. Banik, learned advocate appearing for the petitioner would vehemently contend that since the learned trial judge permitted the petitioner to pay the current rent month by month, the petitioner was not required to deposit the arrears of rent.

This Court is not inclined to accept such submission for the reasons as stated hereinafter Section 7(1) (a) of the 1997 Act states that on a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of 10% per annum. Section 7(1) does not contemplate filing of any application but mandates deposit of all arrears of rent.

On a query of the Court, Mr. Banik, learned advocate appearing for the petitioner, in his usual fairness, submits that the petitioner did not raise any dispute as to the rate of rent or as to the period of default in the application under Section 7(2) of the 1997 Act, but the fact remains that the petitioner has admitted that the rent on and from the month of August, 2021 was due from

him which was not deposited either in compliance with the provisions of Section 7(1) (a) of the 1997 Act or under Section 7(2) of the said Act.

Section 7(3) of the 1997 Act states that if the tenant fails to deposit or pay any amount referred to in sub-section (1) of sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

In the order dated May 14, 2024, the learned Civil Judge, 12th Bench, City Civil Court at Calcutta has recorded that till the date of passing of such order no rent control challan has been submitted till date. It is not the case of the petitioner that the petitioner submitted documents in support of their claim to show that the petitioner has complied with the provisions of Section 7(1) of the 1997 Act. Thus, the provisions of Section 7(3) of the 1997 Act automatically stands attracted on failure of the petitioner to comply with the provisions of Section 7 (1) or Section 7(2) of the 1997 Act.

The learned trial judge was right in striking out the defence of the petitioner against the delivery of possession. Though the petitioner filed an application under Section 151 of the Code of Civil Procedure praying for recall of the order dated May 14, 2024 but no document was filed by the petitioner to show that the requirements of Section

7(1) or Section 7(2) of the 1997 Act has been complied with.

At this stage it would be relevant to point out that on the prayer of the learned advocate for the petitioner this Court by an order dated May 6, 2025 allowed the prayer for time made by the petitioner in order to produce the rent control challan for the period of August, 2021 to March, 2022 and November, 2022 to February, 2023 by filing a supplementary affidavit. However, no supplementary affidavit in compliance of the order dated May 6, 2025 has been filed by the petitioner.

Even before this Court no document has been produced by the petitioner to show that the petitioner complied with the requirement under Sections 7(1) or 7(2) of the 1997 Act.

The learned trial judge was right in refusing to recall the order dated May 14, 2024.

For all the reasons as aforesaid, this Court is not inclined to interfere with such orders impugned.

Accordingly, CO 317 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)